



Northern Ireland

Public Services
Ombudsman

Investigation Report

Investigation of a complaint against Causeway Coast and Glens Borough Council

NIPSO Reference: 201915620

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The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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Case Reference: 201915620

Listed Authority: Causeway Coast and Glens Borough Council

SUMMARY

I received a complaint about the actions of Causeway Coast and Glens Borough Council (the Council) in relation to its handling of planning enforcement case LA01/2018/0185/CA. The enforcement case related to the complainant's concerns that a wind turbine constructed near to his property was in breach of planning control.

I obtained from the Council all relevant documentation, together with its comments on the issues the complainant had raised. My investigation examined evidence relating to the Council's handling of planning enforcement case LA01/2018/0185/CA; certificate of lawful use or development application LA01/2018/1540/LDE; and planning applications B/2010/0333/F and LA01/2018/0363/F. My investigation also considered documentation relating to the Council's handling of the formal complaint the complainant first submitted to it on 21 June 2019.

My investigation found that the Council delayed unreasonably both in opening the planning enforcement case and then in progressing its investigation to the point where a course of action was agreed; that it failed to document the rationale for the priority classification it assigned to the case; that it failed to make appropriate records of decisions it took during the course of the case; and that it failed to notify the complainant that it had closed the case.

Although the complainant was also aggrieved that the Council had not tried to establish the date on which the unauthorised development would become immune to enforcement action, I found no evidence of maladministration in that regard.

I was satisfied that the maladministration disclosed by my investigation caused the complainant to experience the injustice of uncertainty and frustration. It also meant that he had to take the time and trouble to bring a complaint to my Office in order to have his concerns about the Council's handling of the planning enforcement case addressed.

I recommended that the Council provide the complainant with a written apology and that it make a number of service improvements.

The Council accepted my recommendations.

THE COMPLAINT

1. I received a complaint about the actions of Causeway Coast and Glens Borough Council (the Council). The complainant was dissatisfied with a number of aspects of the Council's handling of planning enforcement case LA01/2018/0185/CA. He said the Council's actions had caused him frustration and anger, and that he had been put to considerable time and trouble in seeking to have his concerns addressed.

Background

2. In June 2012 the (former) Department of the Environment (DOE) Planning Service granted planning permission¹ for the erection of a wind turbine, with a hub height of 31m, at land 400m north of 60 Gelvin Road, Dungiven. The planning permission was subject to compliance with four planning conditions. A wind turbine was subsequently erected at the site.
3. In March 2018, an application² was made to the Council for planning permission for an alternative wind turbine, with a tower height of 44m and blade length of 22m, to be erected at the same location.
4. The complainant wrote to the Council's Planning Department on 18 May 2018, objecting to the proposed development. In addition to setting out the grounds for his objection, the complainant raised concerns that the existing turbine did not comply with all conditions of the planning permission granted in 2012.
5. The Planning Department opened a planning enforcement case³ on 18 July 2018. A site inspection conducted on 22 August 2018 established that the hub height of the existing wind turbine was approximately 3 to 4m higher than the 31m hub height approved in June 2012. It also found that a small control building had been constructed, without planning permission, close to the turbine.

¹ Planning application B/2010/0333/F

² Planning application LA01/2018/0363/F

³ Planning enforcement case LA01/0185/CA

6. On 4 October 2018, the Planning Department issued a warning letter regarding the unauthorised development. The warning letter required, by 15 November 2018, the turbine and building to be permanently removed/demolished or either planning permission or immunity from enforcement action to be demonstrated.
7. On 11 October 2018, a planning agent informed the Planning Department that the existing wind turbine had been in place for four years and eight months. The Planning Department decided on 30 October 2018 to issue an enforcement notice to prevent the unauthorised development from becoming immune from enforcement action.⁴ The enforcement notice was not issued.
8. On 15 November 2018, the Planning Department received an application⁵ for a Certificate of Lawful Use or Development (CLUD) in relation to the existing wind turbine. The CLUD application stated that the existing turbine was '*fully installed*' on 25 September 2013. As such, the CLUD application sought to demonstrate that the existing turbine was immune from enforcement action because it had been 'substantially complete' for more than five years.
9. The Planning Department decided on 24 January 2019 to await the outcome of the CLUD application before deciding what further action in relation to the enforcement case was appropriate.
10. The CLUD application was approved on 13 March 2019. On 11 April 2019, the Planning Department decided to close the enforcement case on the basis that the existing turbine was lawful because the time limit for the taking of enforcement action had expired.
11. The complainant wrote to the Council on 21 June 2019, again raising objections to proposed alternative wind turbine. He also expressed his dissatisfaction with the Councils' response to the concerns he had previously brought to its attention (in his objection letter of 18 May 2018) regarding the existing turbine

⁴ Section 132 of The Planning Act (Northern Ireland) 2011 prevents the taking of enforcement action after the end of a five year period beginning on the date on which the operations were substantially complete.

⁵ CLUD application LA01/2018/1540/LDE

being in breach of the planning permission granted in July 2012. The complainant asked the Council to treat his letter as a formal complaint.⁶

12. The Council responded to the complaint under each of the three stages of its complaints policy. The Council's final response was provided to the complainant on 7 October 2019.
13. Being dissatisfied with the Council's response to his complaint, the complainant complained to my Office. He raised a number of concerns regarding the Council's response to the alleged breach of planning control that he first brought to its attention in his letter of 18 May 2018 (that is, that the existing wind turbine did not comply with all conditions of the planning permission granted in July 2012). He stated that:
 - the Council failed, in a number of respects, to comply with its own planning enforcement strategy;
 - the Council failed to respond in a timely manner when informed that the existing wind turbine did not comply with relevant planning conditions;
 - the Council failed to assign the appropriate priority classification to the planning enforcement case when it was opened on 18 July 2018;
 - the Council failed to issue an enforcement notice; and
 - the Council failed to inform him that the planning enforcement case had been closed.

Issue of complaint

14. I accepted the following issue of complaint for investigation:

Whether the Council's planning enforcement investigation was appropriate, reasonable and in accordance with relevant standards.

⁶ COMP 24/19

15. Having considered the matters the complainant raised, I decided that in particular, my investigation of this issue of complaint would examine the following:
- whether there was unreasonable delay in opening the planning enforcement case, following the Council's receipt of concerns that the existing wind turbine did not comply with all conditions of the planning permission granted in July 2012;
 - whether the Council took appropriate action in assigning a priority classification to the planning enforcement case;
 - whether there was unreasonable delay in progressing the planning enforcement case (that is, conducting a site inspection and agreeing a course of action);
 - whether the Council took appropriate action to establish the date on which the unauthorised development would (or had) become immune from enforcement action;
 - whether the Council acted appropriately in not issuing an enforcement notice in the course of the planning enforcement case; and
 - whether the Council informed the complainant the planning enforcement case had been closed.

INVESTIGATION METHODOLOGY

16. In order to investigate this complaint, I obtained from the Council all relevant documentation, together with its comments on the issues the complainant raised. The investigation examined evidence relating to the Council's handling of planning enforcement case LA01/2018/0185/CA ('the Planning Enforcement Case'); CLUD application LA01/2018/1540/LDE ('the CLUD Application'); planning application B/2010/0333/F ('the 2010 Planning Application'); and planning application LA01/2018/0363/F ('the 2018 Planning Application'). The investigation also examined relevant documentation relating to the Council's handling of complaint COMP 24/19 about the Planning Department's actions, which the complainant first submitted to the Council on 21 June 2019 ('the Service Standards Complaint').

Relevant Standards and Guidance

17. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case. I also make reference to relevant regulatory, professional and statutory guidance.

The general standards are the Ombudsman's Principles:⁷

- The Principles of Good Administration; and
- The Principles of Good Complaints Handling.

18. The specific standards and guidance referred to in this report are those which applied at the time the events complained of occurred. These standards and guidance governed the exercise of the administrative functions and professional judgement of those individuals whose actions are the subject of this complaint.

The specific standards and guidance relevant to this complaint are:

- The Planning Act (Northern Ireland) (2011) ('the 2011 Planning Act') – Sections 131, 132, 138 and 169;
- Enforcement Practice Note 1 – Introduction to Planning Enforcement, published by the Department for Infrastructure, October 2016 ('Enforcement Practice Note 1');
- Enforcement Practice Note 3 - Investigative Approaches, published by the Department for Infrastructure, October 2016 ('Enforcement Practice Note 3');
- Enforcement Practice Note 4 – Enforcement Procedures, published by the Department for Infrastructure, October 2016 ('Enforcement Practice Note 4');
- Causeway Coast and Glens Borough Council Planning Enforcement Strategy ('the Council's Planning Enforcement Strategy'); and
- Causeway Coast and Glens Borough Council Comments, Compliments and Complaints Policy ('the Council's Complaints Procedure').

⁷ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

19. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the administrative actions of the public authority complained of. It is not my role to question the merits of a discretionary decision taken by a public authority, unless my investigation discloses evidence that there was maladministration in the process by which that decision was taken.
20. I did not include in this report all of the information obtained in the course of the investigation but I am satisfied that everything I consider to be relevant and important was taken into account in reaching my findings.
21. A draft of this report was shared with the complainant and the Council for comment on factual accuracy and the reasonableness of my proposed findings and recommendations. I gave careful consideration to the comments I received from both the complainant and the Council before I finalised this report.

THE INVESTIGATION

Detail of Complaint

Delay in opening the Planning Enforcement Case

22. The complainant said that he wrote to the Council on 18 May 2018, objecting to the 2018 Planning Application. He said that as well as setting out his objections to the proposed development (an alternative (larger) turbine than the one currently in place), he pointed out that the existing wind turbine was higher than that granted planning permission in July 2012. The complainant believes the Council failed to properly check the contents of his letter before uploading it to the Planning Portal as an objection to the 2018 Planning application. He believes the Council failed take timely action to open an enforcement case in relation to the breach of planning control he reported at that time.

Priority classification assigned to the Planning Enforcement Case

23. The complainant believes the Council assigned the incorrect priority classification to the Planning Enforcement Case. He said the Council informed him that the case was identified as '*Priority 3 – minor breaches that can be regularised*'. He considers this was wrong, as 'Priority 3' applies to breaches involving domestic sheds, fences and extensions. The complainant believes

that 'Priority 2', which relates to unauthorised works or uses which cause loss of amenity or any other significant public or private impact, and non-compliance with conditions of planning approval, ought to have been assigned to the Planning Enforcement Case, as, he said, the alleged breach concerned '*a wind turbine of nearly 40m high*'.

Delay in progressing the Planning Enforcement Case

24. The complainant highlighted that despite having reported the alleged breach of planning control to the Council in his letter of 18 May 2018, the Planning Enforcement Officer (the PEO) to whom the case was assigned, did not carry out a site inspection until 22 August 2018. The complainant also expressed dissatisfaction that the PEO did not complete her Enforcement Report until 4 October 2018, six weeks after the site inspection.

Establishing the date of immunity

25. The complainant pointed out that the Council informed him that it did not instigate formal enforcement action prior to the existing wind turbine becoming immune (to enforcement action) because there was '*an insufficient evidential basis to do so.*' He considers the Council ought to have taken action to establish the date on which the existing wind turbine would become immune from enforcement action.

Action taken in the Planning Enforcement Case

26. The complainant said he was informed by the Council that on 30 October 2018, a decision was taken to issue an enforcement notice in relation to the existing wind turbine. He is aware that despite the Council having by then been advised by a planning agent that the immunity date was approaching, the enforcement notice was not issued.

Not informing the complainant of the closure of the Planning Enforcement Case

27. The complainant is aggrieved that the Council did not notify him that the Planning Enforcement Case had been closed. He highlighted that the Council's Planning Enforcement Strategy states, '*Complainants will be advised when a case has been concluded.*'

Evidence Considered

28. I considered relevant legislation, policies and guidance; documentation provided by the Council; and the Council's written responses to investigation enquiries.

Legislation, policies and guidance

29. I considered the following legislation, policy and guidance, relevant extracts of which are included at Appendix Two to this report.

- The 2011 Planning Act;
- The Council's Planning Enforcement Strategy;
- Enforcement Practice Note 1;
- Enforcement Practice Note 3; and
- Enforcement Practice Note 4.

Relevant documentation

30. I completed a review of the documentation the Council provided in response to my investigation enquiries. This documentation included a copy of the Council's files relating to the 2010 Planning Application; the 2018 Planning Application; the Planning Enforcement Case; the CLUD Application; and the Service Standards Complaint. I compiled chronologies of relevant events and actions relating to the Council's handling of these. The chronologies, along with relevant extracts of the documentation examined, are at Appendices Three, Four, Five, Six and Seven respectively.

The Council's response to investigation enquiries

31. I made written enquiries to the Council about the issues the complainant raised. The Council's responses to my enquiries are at Appendix Eight to this report.

Analysis and Findings

Delay in opening the Planning Enforcement Case

32. The complainant believes the Council failed take timely action to open an enforcement investigation in response to the concerns he reported about the existing wind turbine not complying with the planning permission granted in 2012.

33. My investigation established that on 18 May 2018, the complainant wrote to the Council's Planning Department, objecting to the 2018 Planning Application. The Council received the complainant's six page letter on 4 June 2018. I note the subject of the letter was, *'Re: planning application for wind turbine LA01/2018/0363/F, previous reference: B/2010/0333/F'*. The complainant stated in the first paragraph of his letter, *'I strongly object to the proposal to increase the height and overall size of the turbine on the above application'*. He went on, in the first four pages of the letter, to set out the detail of his objections.
34. I note, however, that in the fourth paragraph of the fourth page of his letter, the complainant wrote, *'I also wish some checks to be carried out regarding the existing turbine (approved June 2012 under B/2010/0333/F), there are a number of items that I wish to draw your attention to.'* The complainant then set out his concerns that the existing turbine did not comply with conditions of the planning permission granted in June 2012. He concluded his letter by stating, *'I request therefore that you check the existing turbine, to ascertain if all the conditions on the Planning Approval have been met, and inform me of your findings.'*
35. I note that previously, on 17 May 2018, the Council had received an anonymous letter from *'A concerned neighbour'*, which also alleged that the existing wind turbine constituted a breach of planning control. I note the Council took no action in response to that anonymous allegation. I am satisfied that this was in keeping with paragraph 4.1 of the Council's Planning Enforcement Strategy, which states that anonymous complaints will only be investigated where they relate to *'unauthorised works to a listed building or works to trees which are in a Conservation Area or protected by a Tree Preservation Order.'*
36. Returning to the complainant's reported breach of planning control, I note that in response to investigation enquiries, the Council said that *'the heading and format'* of the complainant's letter of 18 May 2018 *'did not make clear'* that the letter also contained an enforcement complaint. I note the Council also said that the complainant's enforcement complaint *'was not clearly set out'*

in the objection letter and was not easily detected on initial receipt of the correspondence.'

37. In addition, I note that, in responding to my enquiries, the Council stated that the complainant's letter *'was subject to initial redaction on 05 June 2018 before being uploaded to the Planning Portal on 06 June 2018.'* It said too that *'when [the] Senior Planning Officer carried out the initial scan reading of the letter for redaction purposes it was not evident that it additionally constituted an enforcement complaint'*. The Council also expressed the view that *'it would have been appropriate for the complainant to have clearly highlighted in the heading and opening paragraph that the letter additionally constituted an enforcement complaint'*.
38. I accept that it would have been helpful for the complainant to have indicated from the outset of his letter that, in addition to objecting to the 2018 Planning Application, he was also complaining about a breach of planning control in relation to the existing turbine. That said, there was no requirement on the complainant to present his enforcement complaint in any specific format or manner in order that he could expect the Council to deal with it in a timely fashion. Furthermore, I consider his concerns about the existing turbine were made clear in the latter part of his letter of 18 May 2018; I do not accept the Council's position that his enforcement complaint, which, I note, extended over approximately one and a half pages of his letter, was not *'clearly set out'* or *'easily detectable'*.
39. I acknowledge that the initial reading of the letter, following its receipt on 4 June 2018, was for the specific purpose of redacting personal data prior to the letter being uploaded to the Planning Portal in connection with the 2018 Planning Application. Nonetheless, I consider that that first reading of the letter ought to have been sufficiently thorough to identify that a sizeable element of its content related to an alleged breach of planning control, rather than to an objection to a live planning application. It is evident that did not happen.
40. I note too that in responding to my enquiries, the Council pointed out that *'Case Officers are not required to assess the content of representations*

immediately on receipt.’ The Council said that it was when the content of the complainant’s letter was being assessed later on, in the context of the consideration of the 2018 Planning Application, that it was *‘identified that a small part of the content was an enforcement related complaint’*, and that *‘It was at that point on 18 July 2018, approximately six weeks after receipt, that the Planning Department proceeded to open [the Planning Enforcement Case].’*

41. Despite the Council’s assertion, my investigation found that when the case officer dealing with the 2018 Planning Application (‘the 2018 Planning Application Case Officer’) wrote on 14 June 2018 to the planning agent who was acting on behalf of the applicant in the 2018 Planning Application (‘the 2018 Planning Application Agent’), he advised, *‘There are a number of objections to the proposed turbine which have raised a number of issues.’* The investigation found too that on the same date, the 2018 Planning Application Case Officer wrote to a planning consultee, advising, *‘We have received a number of objections ... one of the issues raised is the interference that has occurred due to the existing turbine on site and concerns that this interference would be exacerbated by the proposed larger turbine.’*
42. The Case Officer’s references to *‘a number of issues’* having been raised by objectors, and to the nature of some the objections received, indicates that by the time of his correspondence to the 2018 Planning Application Agent and to the planning consultee on 14 June 2018, he had given some consideration to the content of the objection letters received. It is my view, therefore, that there was an opportunity, earlier than 18 July 2018, to identify that the complainant’s letter of 18 May 2018 contained an enforcement complaint.
43. It is of concern then that despite the complainant’s letter having been read for redaction purposes on 5 June 2018, prior to uploading to the Planning Portal, and its content having been given some consideration by 14 June 2018, in the context of the assessment of the 2018 Planning Application, it was not until 18 July 2018, more than six weeks after the letter’s receipt, that the Council formally recognised that it contained an enforcement complaint and opened the Planning Enforcement Case. I consider the Council missed opportunities to

take that action at an earlier stage.

44. I referred to the Principles of Good Administration earlier in this report. These Principles, which are reproduced at Appendix One to this report, are the standards of good administration expected of public bodies. The First Principle, 'Getting it Right', means public bodies should provide effective services. The Second Principle, 'Being Customer Focused' requires public bodies to deal with people helpfully and promptly, within reasonable timescales.
45. It is my view that the failure to identify the complainant's planning enforcement concerns and to initiate an investigation of them within a reasonable timeframe, following receipt of his letter of 18 May 2018, is evidence that the Council did not meet these standards of good administration. I consider this failing to be maladministration on the part of the Council.
46. I note that in relation to the impact of the delay in opening Planning Enforcement Case, the Council stated, *'Had the Planning Department proceeded to open [the Planning Enforcement Case] immediately on 04 June 2018, the outcome of [the Planning Enforcement Case] would have been the same. Therefore the time lapse of approximately six weeks was of no disadvantage to [the complainant's] position.'*
47. In my view, irrespective of what may or may not have been the outcome, had the enforcement investigation got underway sooner, I consider the citizens of Causeway Coast and Glens Borough have the right to expect that the complaints they make to the Council about alleged breaches of planning control will be dealt with promptly, following their receipt. It is evident the Council failed to do that in this case.
48. I am satisfied that the maladministration I identified in relation to this element of the complaint caused the complainant to experience the injustice of frustration because his reasonable and justifiable expectation that the Council would take prompt action to begin an enforcement investigation, in response to his concerns, was not met. I therefore uphold this element of the complaint.

Priority classification assigned to the Planning Enforcement Case

49. The complainant believes the Council assigned the incorrect priority classification to the Planning Enforcement Case. He said he considers the Planning Enforcement Case ought to have been assigned 'Priority 2' and not 'Priority 3'.
50. I note that when he wrote to the Council on 18 May 2018, the complainant alleged that the existing wind turbine did not comply with all four conditions of the planning permission granted in July 2012 (under the 2010 Planning Application). Specifically, he alleged a breach of the condition that the development was to be constructed and operated in a manner that noise from the installed turbine did not exceed the level presented in a noise impact assessment dated 8 March 2012, and the condition that the development be carried out in accordance with the approved drawings the Council had received on 30 January 2012 and 19 June 2012.
51. I note too that when the 2018 Planning Application Case Officer opened the Planning Enforcement Case on 18 July 2018, he recorded (in the Enforcement Complaint Form) the nature of the alleged breach of planning control as: *'[Unauthorised] wind turbine'* and *'Objections raised within [2018 Planning Application] allege that the turbine on site is not that which was approved but is a larger turbine'*. He also recorded, *'Turbine erected on site (see photographs⁸). Associated infrastructure also constructed in close proximity to turbine. This does not appear to be on approved plans and not in red line.'*
52. I note the Council's Planning Enforcement Strategy provides that planning enforcement investigations are assigned one of three priority classifications. The Enforcement Strategy states that 'Priority 1' is applicable to *'works resulting in public danger or development which may result in permanent damage to the environment'*. 'Priority 2' is for cases involving the *'commencement of building operations without planning permission, unauthorised works or uses which cause loss of amenity or any other significant public or private impact; non-compliance with conditions of a*

⁸ Photographs the 2018 Planning Application Officer took during a site inspection on 14 May 2018 in relation to the 2018 Planning Application

planning approval. 'Priority 3' is to be assigned to *'Minor breaches that can be regularised, for example domestic sheds, fences and extensions.'*

53. I note that in response to my investigation enquiries, the Council advised, *'The priority status of enforcement investigations is given by the Senior Planning Officer with responsibility for the planning enforcement section. At the same stage the Senior Planning Officer allocates the application to a Case Officer. This allows a consistent approach in identifying the relevant priority for new investigations.'*
54. In relation to the Planning Enforcement Case specifically, I note the Council stated that this case *'was correctly categorised a Priority 3 – Minor breaches that can be regularised.'* I note that in explaining why a 'Priority 3' classification was considered appropriate, the Council said, *'...a substantial wind turbine already benefited from planning permission at this location. Therefore the substance of the unauthorised development was that a different wind turbine had been erected on site that was slightly larger relative to that approved ... it was considered that this breach was a difference of 5m in hub height with associated small building and had the possibility of being regularised through the submission of a planning application ... This scenario aligned with the topology of breaches set out in [the Council's Planning Enforcement Strategy] as Priority 3 cases.'*
55. I note the Council also explained why it considered a 'Priority 2' classification was not appropriate for the Planning Enforcement Case. The Council said that because the alleged breach involved the erection of a different turbine to that which had been approved in 2012 *'... it was not possible to comply with the conditions of the original approval for the wind turbine ... Therefore the issue of breach of conditions (Priority 2 in [the Council's Planning Enforcement Strategy] was not relevant to this case'*.
56. The decision on the appropriate priority classification to be assigned to any planning enforcement investigation the Council commences is a discretionary decision – it is a professional judgement that the Council's Planning Department has the discretion to take. As I explained at the outset of this

report, it is not my role to question the merits of a discretionary decision taken by a public authority, unless my investigation discloses evidence that there was maladministration in the manner in which that decision was taken or discretion was exercised. My consideration of the Council's actions in relation to this matter therefore examined the process by which it decided that a 'Priority 3' classification should be assigned to the Planning Enforcement Case.

57. I considered the rationale the Council provided during my investigation as to why a 'Priority 3', and not a 'Priority 2', classification was assigned to the Planning Enforcement Case. On the face of it, I do not find that rationale to be so unreasonable that I would have cause to question it, nor do I consider it contrary to the Council's Planning Enforcement Strategy, when all the circumstances of the alleged breach of planning control are taken into account.
58. However, I am concerned that there is no contemporaneous evidence that the reasons the Council cited, more than two years after the taking of the decision to assign of a 'Priority 3' classification, were conscious considerations at the time that decision was taken. In this regard, the Council advised that the only contemporaneous evidence it held relating to the taking of the decision was *'the checking of the tick box on the front of the enforcement investigation file'*. I consider the checking of a tick box is insufficient to properly document the rationale for such a discretionary decision, even if, as the Council also advised, this is *'established practice and is the extent of evidence available regarding priority classification on any enforcement investigation.'*
59. The Principles of Good Administration emphasise the importance of good record keeping for public bodies. The Third Principle, 'Being Open and Accountable' requires public authorities to be open when accounting for their decisions and to give reasons for those decisions. This means they should create and maintain reliable and usable records as evidence of their activities.
60. I consider the unsatisfactory documenting of the rationale for the 'Priority 3' classification is evidence that the Council failed to adhere to this Principle of Good Administration. This is a further failing that I consider to be maladministration on the part of the Council.

61. I am satisfied that this maladministration caused the complainant the injustice of frustration and uncertainty as he cannot be assured that at the time the decision was taken to assign a 'Priority 3' classification to the Planning Enforcement Case, the decision was made for the right reasons, with all appropriate considerations being taken into account. I therefore uphold this element of the complaint.

Delay in progressing the Planning Enforcement Case

62. The complainant is aggrieved that although he reported the alleged breach of planning control to the Council in his letter of 18 May 2018, a site inspection was not completed until 22 August 2018, and the Enforcement Report, recommending the way forward, was not completed until 4 October 2018.
63. My investigation established that on 18 July 2018, the 2018 Planning Application Case Officer completed an Enforcement Complaint Form, setting out details of the alleged breach of planning control relating to the existing wind turbine. The 2018 Planning Application Case Officer recorded that the breach had been alleged in objections received to the 2018 Planning Application. Those objections included the complainant's letter of 18 May 2018, which the Council had received on 4 June 2018. I note that following receipt of the Enforcement Complaint Form, the Council's Enforcement Team 'logged' the Planning Enforcement Case on 20 July 2018.
64. I note the Council's Planning Enforcement Strategy sets out target timescales for conducting site inspections and for agreeing a course of action in planning enforcement cases. Specifically, it is stated that the Council aims to '*Site inspect 95% of all [Priority 2 and Priority 3] cases within 30 working days of receipt of the initial complaint*' and that it aims to '*Discuss and agree a course of action for 95% of all [Priority 2 and Priority 3] cases within 12 weeks of receipt of the initial complaint.*'
65. I note that in responding to my enquiries, the Council confirmed that the site inspection for the Planning Enforcement Case (which, as already noted, was assigned a Priority 3 classification) did not take place until 22 August 2018, which was more than 11 weeks after 4 June 2018, the date on which the

Council received the complainant's letter alleging that the existing turbine constituted a breach of planning control.

66. I note that the Council nevertheless contended to me that it met the site inspection performance target set out in the Planning Enforcement Case because it carried out the site inspection '*within 30 working days from the date the complaint was received by the Enforcement Section.*' I found no reference in the Council's Planning Enforcement Strategy to the start date for this performance target being the date the complaint was received '*by the Enforcement Section*'.
67. I note that the Council also said that following the site inspection on 22 August 2018, '*[the PEO] issued their initial Enforcement Report on 04 October 2018.*' The Council pointed out that its Planning Enforcement Strategy '*does not provide a target timeframe for the issue of Enforcement Reports post the site inspection*'. It contended that the timeframe for issuing the Enforcement Report in the Planning Enforcement Case '*was reasonable given other work commitments*'.
68. I accept that the Council's Planning Enforcement Strategy does not stipulate a performance target for the completion of Enforcement Reports. However, it does set a 12 week target '*from the date of receipt of the complaint*' for discussing and agreeing a course of action. In the Planning Enforcement Case, I note the Enforcement Group met on 4 October 2018, and discussed and agreed the PEO's recommendation that a warning letter should issue to the alleged offender. That meeting took place some 17 weeks following the date of the Council's receipt of the complainant's allegation that a breach of planning control had occurred, which was well outside the Council's 12 week target timescale.
69. I am mindful that the Council may contend that the start date for this particular performance target is also the date on which the complaint was received by the Enforcement Section, and that since, in the Planning Enforcement Case, that date was 20 July 2018, the target timescale for discussing and agreeing the way forward was met. However, I again make

the point that this is not how the performance targets are described in the Council's Planning Enforcement Strategy. Rather, as it is written, the Strategy creates a reasonable expectation that the 30 working day target timescale for conducting a site inspection and the 12 week target timescale for agreeing a course of action will begin on the date the Council receives an enforcement complaint. The Strategy also creates an expectation that these timeframes will be met in 95% (that is, almost all) 'Priority 2' and 'Priority 3' cases.

70. I have already highlighted in this report that the First Principle of Good Administration, 'Getting it Right', requires public bodies to act in accordance with their policies and guidance. The Second Principle, 'Being Customer Focused', requires public bodies to keep to their commitments, including any published service standards.
71. I consider the Council's failure to carry out a site inspection and to then discuss and agree a course of action in the Planning Enforcement Case, within a reasonable timeframe and in accordance with the customer expectations created by its Planning Enforcement Strategy, is evidence that these standards of good administration were not met in the Council's handling of the initial stages of the Planning Enforcement Case. This is further maladministration on the part of the Council.
72. I considered what difference the delay in completing the site inspection and agreeing a course of action is likely to have made to the overall outcome of Planning Enforcement Case. I concluded that if the Council had met its target timescale of 12 weeks (from the date of its receipt of the complaint) for agreeing a course of action, it could have as late as 27 August 2018 before a decision on the way forward was taken. If the Council had then issued a warning letter on 27 August 2018, the compliance date for required remedial action would have been 8 October 2018. Although the Council did not know it at the time, the existing turbine had by that date already become immune from enforcement action, on 25 September 2018.
73. I consider therefore that conducting a site inspection and agreeing a course of

action sooner than was the case is unlikely to have made any difference to the eventual outcome of the Planning Enforcement Case. I am satisfied, nonetheless, that the maladministration identified in my investigation of this element of the complaint caused the complainant to experience the injustice of frustration because his reasonable expectation that a decision on the action to be taken in response to his concerns would be taken within 12 weeks of the Council receiving his complaint was not met. I therefore uphold this element of the complaint.

74. I should also record that if it is the Council's intention to measure performance in terms of the time taken to site inspect and agree the way forward from the date a complaint is received by the Enforcement Section specifically, rather than from the date a complaint is received by the Council generally, then, in my view, the Council's Planning Enforcement Strategy ought to make that clear. Furthermore, the Council ought to have in place procedures and processes that ensure that enforcement complaints are identified as such on receipt, and that they are passed to the Enforcement Section without delay.

Establishing the date of immunity

75. The complainant said the Council told him that it did not instigate formal enforcement action prior to the existing (unauthorised) wind turbine becoming immune because there was *'an insufficient evidential basis to do so.'* He considers the Council ought to have taken action early in the Planning Enforcement Case to establish the turbine's immunity date.
76. I note that section 132(1) of the 2011 Planning Act provides that *'Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 5 years beginning with the date on which the operations were substantially completed'*. It is clear then that the date on which an unauthorised development has become, or will become, immune, is relevant to decisions about what action is appropriate in responding to alleged breaches of planning control.

77. This point is highlighted in Enforcement Practice Note 3, which, at paragraph 13.1, advises of the need for councils *'to bear in mind the statutory time limits for taking enforcement action as set out in section 132 of [the 2011 Planning Act]'*. I note that in its Planning Enforcement Strategy (at paragraph 9.1), the Council commits to being mindful of these time limits when considering enforcement action.
78. My investigation found that in responding to his Service Standards Complaint, the Council informed the complainant that *'In the initial stages of the [enforcement] investigation, due to insufficient evidence, it was not known if the wind turbine was already immune from enforcement action or the date it would definitively become immune from enforcement action.'*
79. I note that in response to my investigation enquiries about this element of the complaint, the Council said that the PEO *'undertook planning history checks on 20 August 2018'* prior to her site inspection on 22 August 2018. The Council said, *'The purpose of this was to identify what planning permissions were relevant to the investigation and to review evidence regarding when the substantially completed development first appeared on verifiable aerial photography'*.
80. The Council advised me that the PEO reviewed aerial photographs taken on 8 June 2013 and 11 June 2015. It said that the PEO recorded in her Enforcement Report of 4 October 2018 that the aerial photographs *'showed that while the wind turbine was not present on site on 08 June 2013 it was present on 11 June 2015.'* The Council said the photographs led the PEO to conclude *'that if the wind turbine was substantially complete on the next day from the day it was not present (08 June 2013), the earliest potential immunity date was 09 June 2018'*. I note the Council pointed out that *'at this initial stage of the investigation, due to insufficient evidence, it was not known if the wind turbine was already immune or the date it would definitely become immune from enforcement action'*.
81. The Enforcement Report the PEO completed on 4 October 2018 records that at that time, the Council did not have any evidence that confirmed the existing

turbine's immunity date. The Enforcement Report states, '*... there is clearly a breach of planning control ... the alleged unauthorised works may be immune from enforcement action but a definitive [sic] date can not [sic] be identified, it is some point between 9/6/18 and 10/6/20.*⁹

82. It is the case therefore that at this stage in the Planning Enforcement case, the Council recognised not only that the existing turbine may have already become immune some four months previously (in June 2018) but also that there was the potential for immunity not to be reached for a further 20 months (in June 2020).
83. I note that Enforcement Practice Note 3 explains that a council has '*the power, under section 133 of [the 2011 Planning Act] to request additional information about activities on land where it suspects a breach of planning control has occurred.*' This power is exercised through the serving of a Planning Contravention Notice (PCN), which can request the recipient to provide information on a range of matters, including details of when any operation, activity or use on the land in question began. I am conscious that the serving of a PCN would have provided an opportunity at an early stage in the Planning Enforcement Case for the Council to establish the date of immunity.
84. However, it is significant to my findings that the statutory power for a council to serve a PCN is a discretionary one. As such, there was no requirement on the Council to serve a PCN in this case. Instead, the Council decided to issue a warning letter to the alleged offender on 4 October 2018, requiring him by 15 November 2018, to permanently remove or demolish the turbine and associated building, or demonstrate planning permission or immunity. (I will set out my findings on the decision to issue the warning letter later in this report.)
85. In my view, taking action at the initial stages of the Planning Enforcement case to establish the immunity date would have been helpful in informing decisions on the most appropriate way forward. Certainly, with the benefit of hindsight, given that it was to later transpire that the immunity date was in fact

⁹ 10 June 2020 is five years from the date the aerial photograph of 11 June 2015 confirmed the turbine had been substantially complete from at least 10 June 2015.

25 September 2018, it could be argued that the Council ought to have taken such action at the earliest opportunity. However, I am mindful that at the time the PEO completed her Enforcement Report on 4 October 2018 and recommended a way forward (the issuing of a warning letter) the Council did not have any evidence that the existing turbine's immunity date was imminent.

86. In this regard, I am aware that at stage 2 of the Service Standards Complaint, the complainant referred to the 'concerned neighbour's' anonymous letter of 15 May 2018 having provided details of the date on which the existing turbine had been commissioned.¹⁰ However, as I have already recorded in this report, that anonymous letter was not considered in the context of the Planning Enforcement Case, in accordance with the Council's Planning Enforcement Strategy.
87. In the circumstances, I cannot conclude that the Council acted unreasonably in not serving a PCN or taking other action to establish the immunity date, in the early stages of the Planning Enforcement Case. Consequently, I do not uphold this element of the complaint.

Action taken in the Planning Enforcement Case

88. The complainant said the Council told him that a decision was taken on 30 October 2018 to issue an enforcement notice in relation to the existing wind turbine. He is aggrieved that despite the Council having by then been advised by the 2018 Planning Application Agent that the immunity date for the existing turbine was approaching, the enforcement notice was never issued.
89. I note that section 138(1) of the 2011 Planning Act gives local councils the power to issue enforcement notices. An enforcement notice requires a breach of planning control to be remedied. Section 131(2) of the Planning Act provides that the issue of an enforcement notice constitutes the taking of enforcement action.
90. I note too that section 132(4) of the 2011 Planning Act provides that notwithstanding the five year time limit for taking enforcement action that is

¹⁰ According to the Renewable Energy Foundation's website.

stipulated in section 132(1), a council may take further enforcement action in respect of a breach of planning control *'if, during the period of 5 years ending with that action being taken, the council ... has taken or purported to take enforcement action in respect of that breach.'* This provision means that if a council issues an enforcement notice in respect of a breach of planning control prior to the date on which the unauthorised development becomes immune, the council then has up to five years, from the date the enforcement notice was issued, to take further enforcement action in respect of that breach. Effectively, the issuing of an enforcement notice in such circumstances extends the period during which enforcement action may be taken.

91. My investigation established that following the site inspection on 22 August 2018, the PEO recommended in her Enforcement Report of 4 October 2018 that a warning letter should be issued to the alleged offender. The PEO's recommendation was agreed at the Enforcement Group Meeting on 4 October 2018. I note the warning letter issued the same day, requiring the alleged offender to remedy the breach of planning control by 15 November 2018, either by permanently removing or demolishing the existing wind turbine and the associated control building, or by demonstrating planning permission or immunity from enforcement action.
92. In responding to investigation enquiries, the Council advised that its approach to planning enforcement *'is based on one of negotiation at the outset followed by formal enforcement action at a later stage if necessary, subject to some specified conditions.'* The Council pointed out that the same approach *'is advocated in [Enforcement Practice Note 1] which at paragraph 1.2 observes that formal planning enforcement action "may occur after an attempt to resolve the problem by negotiation has not resulted in a satisfactory outcome".'*
93. I note the Council also pointed out that paragraph 5.4 of the Council's Planning Enforcement Strategy *'outlines that the first means of contact with the offender is to "inform the person responsible that they are in breach of planning control/consent".'* The Council said, *'Such means of contact is ordinarily by means of issue of a warning letter.'*

94. I note too that the Council explained why it had not been considered on 4 October 2018 that enforcement action – the issuing of an enforcement notice - should be taken. The Council said that the Planning Department was aware that planning permission had been granted previously for a wind turbine at the same location. It said too that there was no evidence that the existing turbine *‘was causing serious harm’* or that *‘a new planning application to retain the model as erected, if submitted, would be unlikely to be granted planning permission’*. The Council further explained that the Planning Department had no knowledge at 4 October 2018 that the existing wind turbine was approaching immunity. Consequently, it said, *‘it would not have been appropriate, on the evidential basis available at that time, for the Planning Department to have issued an Enforcement Notice on 04 October 2018. Indeed, had the Planning Department done so, it would not have been adhering to the position set out the Council’s Planning Enforcement Strategy and [Enforcement Practice Note 1].’*
95. I note the PEO’s Enforcement Report of 4 October 2018 documents the rationale for recommending that a warning letter should issue. It states, *‘... there is clearly a breach of planning control ... the alleged unauthorised works may be immune from enforcement action but a definitive [sic] date can not [sic] be identified, it is some point between 9/6/18 and 10/6/20. The onus is therefore on the offender to demonstrate immunity ... the Council are in receipt of [the 2018 Planning Application] and if approved will allow for a bigger wind turbine than currently on site, which would have a greater impact ... it is recommended action to send a first warning letter with regards to both the wind turbine and the small building.’*
96. In considering this element of the complaint, I am mindful that planning enforcement is a discretionary function of the Council. I am mindful too that in this regard, the 2011 Planning Act provides local councils with a wide range of discretionary powers to take enforcement action where it is expedient to do so. As such, there was no obligation on the Council to take enforcement action, including issuing an enforcement notice, at any stage in the Planning Enforcement Case.

97. Having examined the manner in which the Council took the discretionary decision to issue a warning letter on 4 October 2018, rather than initiate enforcement action at that time, by serving an enforcement notice, I do not find that decision was unreasonable or contrary to either the Council's Planning Enforcement Strategy or the guidance set out in Enforcement Practice Note 1. In addition, I am satisfied that the Council made and retained an appropriate record – the Enforcement Report of 4 October 2018 - of the rationale for the recommendation that a warning letter should issue at that stage of the Planning Enforcement Case.
98. My investigation established that following the issue of the warning letter on 4 October 2018, the 2018 Planning Application Agent telephoned the PEO on 11 October 2018. I note that the PEO recorded in her note of the call, *'[The Agent] stated that the wind turbine is nearly immune it has been in place for 4 years 8 months ...'*
99. The investigation further established that on 22 October 2018, the PEO telephoned a different planning agent, who was acting for the alleged offender in relation to the Planning Enforcement Case ('the Planning Enforcement Case Agent'). I note the PEO recorded in her note of the call, *'[The Planning Enforcement Case Agent] said they would be submitting a CLUD application before the compliance date on warning letter. [The Planning Enforcement Case Agent] stated that turbine was started Feb'13 & finished Sept'13 & they have evidence.'*
100. I note the PEO completed an Enforcement Further Assessment Report on 29 October 2018. In her report, the PEO recorded, *'On the back of a telephone call with [the 2018 Planning Application Agent] on 11th October 2018, it was stated by him as the offender's agent that the wind turbine on the ground, has been up for 4 years and 8 months. Therefore the wind turbine is close to immunity.'* I note the PEO recommended that *'Due to this issue regarding immunity'*, an enforcement notice be served *'to stop this becoming immune.'* I note too that the PEO did not mention in her Enforcement Further Assessment Report that the Planning Enforcement Case Agent had indicated to her on

22 October 2018 that the alleged offender considered the existing turbine had already become immune, in September 2018.

101. I note that on 30 October 2018, the Enforcement Group agreed that an enforcement notice should be issued *'to prevent immunity.'*
102. In responding to investigation enquiries, the Council informed me that *'in the days immediately after the Enforcement Group Meeting on 30 October 2018'*, the Senior Planning Officer in the Enforcement Section and the PEO (both of whom, I note, had been part of the Enforcement Group that had agreed that an enforcement notice should be issued to prevent immunity) decided *'collectively'* not to issue the enforcement notice until the expiry of the compliance date that had been stipulated in warning letter issued on 4 October 2018, that is, until after 15 November 2018. I note the Enforcement Further Assessment Report does not indicate that any consideration was given to this particular matter at the time the decision was taken to issue an enforcement notice.
103. Furthermore, it is of concern that following the Enforcement Group Meeting on 30 October 2018, two of the three members of the Group that had agreed to issue an enforcement notice *'to prevent immunity'*, decided the enforcement notice should not issue for at least another two weeks. Not only was that decision taken outside of the established and proper decision-making forum, that is, the Enforcement Group, no record was made of such a decision having been taken, nor was the rationale for the decision documented.
104. The Council also informed me that prior to issuing the enforcement notice, a further site inspection would have been necessary, following the expiry of the compliance date, *'to verify whether the wind turbine had been removed'*. The Council said this action would have been required to ensure that a breach of planning control existed at the date of issuing the enforcement notice. Again, I note the Enforcement Further Assessment Report makes no reference to the need to conduct a further site inspection before the recommended enforcement notice would issue.
105. In addition, the Council said that the information the 2018 Planning Application Agent had provided to the PEO on 11 October 2018 *'indicated, at the date of*

Enforcement Group Meeting on 30 October 2018, that approximately a further three months needed to pass until the identified immunity date of February 2019 was reached. The Council said that this disclosure, and *'the absence of any other information to the contrary'*, meant there was *'no evidence signposted that immediate issue of the Enforcement Notice was necessary to prevent immunity, prior to the expiry of the compliance period set out in the Warning Letter'*.

106. Once again, I note the Enforcement Further Assessment Report does not reflect that it was considered at the time that there was a lack of evidence to indicate the immediate issue of an enforcement notice was necessary to prevent immunity. On the contrary, the PEO recorded a clear link between the 2018 Planning Application Agent's disclosure on 11 October 2018 that the immunity date would be reached in a matter of months and the need to issue an enforcement notice *'to stop this becoming immune'*. The Enforcement Group's comment, *'Issue notice to prevent immunity'*, also indicates a clear connection between the issue of the enforcement notice and the (believed to be) approaching immunity date.
107. In addition, the Council informed me that *'A further decision was made not to proceed with the Enforcement Notice on 15 November 2018 as the CLUD application was received within the period for compliance as set out in the warning letter.'* The Council said too that information submitted with the CLUD Application *'demonstrated that the wind turbine was erected on 25 September 2013 ... A Certificate of Lawfulness was issued on 13 March 2019 on the basis that the existing wind turbine was substantially completed for more than five years up to and including the date of the application and the time for enforcement action had expired.'*
108. I found there is no proper record of the *'further decision'* made not to proceed with issuing the enforcement notice on 15 November 2018, on the basis that the CLUD Application was received on that date. The only documented reference to that decision is an undated annotation on the Enforcement Further Assessment Report of 29 October 2018, which states, *'Notice not issued – CLD received 15/11/18'*. I consider this annotation was not an appropriate record of

the decision not to proceed with the enforcement notice: it did not document who took the decision and, importantly, when the decision was taken, so there is no way of knowing whether the need to issue the enforcement notice was in fact reviewed at the 15 November 2018 compliance date.

109. Having considered the available evidence, I am satisfied that it was a conscious decision, and not an administrative oversight, that resulted in the enforcement notice not being issued after the Enforcement Group Meeting on 30 October 2018. However, I am not persuaded, on the basis of that evidence, that the reason the enforcement notice did not issue prior to the receipt of the CLUD Application on 15 November 2018 was because it was decided, subsequent to the Enforcement Group Meeting, that there was no immediate necessity to issue it to prevent immunity and/or that it was considered appropriate to delay the enforcement notice until after the expiry of the warning letter's compliance date and to first complete a further site inspection.
110. I am not in a position to conclude with any degree of certainty why it was decided not to issue the enforcement notice. However, given that as the Council pointed out in its response to stage three Service Standards Complaint, section 169(2) of the 2011 Planning Act precludes a CLUD being issued for a development that is subject to an enforcement notice, I consider it possible that the decision not to issue the enforcement notice may have been influenced by the information the Planning Enforcement Case Agent had provided to the PEO on 22 October 2018. That information created the expectation on the part of the Council that a CLUD Application would be submitted by the 15 November 2018 compliance date stipulated in the 4 October 2018 warning letter, and that that CLUD Application would present evidence that demonstrated the immunity date for the unauthorised wind turbine had already passed.
111. I again highlight that the Third Principle of Good Administration, 'Being Open and Accountable', requires public bodies to be open and transparent when accounting for their decisions and actions, and to create and maintain reliable and useable records as evidence of their activities. Appropriate records underpin good administration. It is essential that public bodies make and maintain records that will allow others to follow their decision making processes

and understand their basis for their decisions. The giving of reasons for decisions is essential for fairness and transparency. An absence of records that document the reasons decisions were made can therefore lead to a perception that those decisions did not have regard to relevant considerations or that they were taken for improper reasons.

112. My investigation found evidence that in this aspect of its handling of the Planning Enforcement Case, the Council did not achieve the standard required by the Third Principle of Good Administration. This failing is a further instance of maladministration on the part of the Council.
113. I am aware that, ultimately, the CLUD Application the Council received on 15 November 2018 presented evidence that the unauthorised wind turbine had become immune from enforcement action on 25 September 2018. I am not in a position to say what the outcome of the Planning Enforcement Case would have been had enforcement notice issued following the Enforcement Group Meeting on 30 October 2018 and prior to the receipt of the CLUD Application on 15 November 2018. Nevertheless, I am satisfied that the maladministration disclosed by my investigation of this element of the complaint caused the complainant to experience the injustice of frustration and uncertainty because he cannot be assured that the decision to not issue the enforcement notice was taken for the proper reasons. I therefore uphold this element of the complaint.

Not informing the complainant of the closure of the Planning Enforcement Case

114. The complainant expressed his dissatisfaction that the Council did not inform him that the Planning Enforcement Case had been closed.
115. The investigation found that the Council closed the Planning Enforcement Case on 11 April 2019, on the basis that a CLUD in relation to the existing wind turbine had been granted on 13 March 2019. I note that the Case Closure Form the Principal Planning Officer completed at that time includes a section entitled, *'To be completed (by admin) once Complaint Notification process is complete'*. I note that although the PEO signed and dated this section of the form on 11 April 2019, the *'Date complainant(s) notification process complete'* was left blank.

116. I note that in response to my investigation enquiries, the Council stated, '*due to an administrative oversight*' the complainant was not informed that the Planning Enforcement Case had been closed. The Council advised, '*An apology was offered for this oversight in the Council's Stage 3 Complaint response.*'
117. I note too that one of the performance targets set out in the Council's Planning Enforcement Strategy is that in 95% of cases, complainants are informed of case closure within four weeks of the date of closure. The Council therefore has a clear published commitment to informing planning enforcement complainants of case closure. It is evident that the in the Planning Enforcement Case, that commitment was not met.
118. As I have highlighted already in this report, the First Principle of Good Administration, 'Getting it Right', means that public bodies should follow their own policy and procedures (whether published or internal). The Second Principle, 'Being Customer Focused' requires public bodies to do what they say they are going to do and to keep to their commitments. The failure to notify the complainant of the closure of the Planning Enforcement Case is evidence that the Council did not meet these requirements of good administration. This is maladministration.
119. I note that in responding to investigation enquiries, the Council expressed the view that not informing the complainant of the closure of the Planning Enforcement Case had no impact on him. I do not agree with this view. While I accept that this failing had no impact on the outcome of the Planning Enforcement Case, I consider the maladministration identified caused the complainant to experience the injustice of frustration and uncertainty. Consequently, I uphold this element of the complaint.

CONCLUSION

120. I received a complaint about the actions of the Council in relation to its handling of the Planning Enforcement Case. The complainant raised concerns about how long it took the Council to begin an enforcement investigation, the priority given to the investigation, how long it took to progress the investigation, why

the Council did not try to establish the immunity date of the unauthorised development that was the subject of the alleged breach of planning control, why the Council did not issue an enforcement notice, and why it did not inform him of the closure of the Planning Enforcement Case.

121. I am mindful that the complainant is of the firm belief that the Council ought to have acted differently and/or more promptly in response to his concerns about the existing wind turbine. Having examined the chronology of the Planning Enforcement Case, it is my view that the complainant's concerns were raised so close to what ultimately transpired to be existing turbine's immunity date that there was no real prospect of a different outcome, in terms of opportunity for the Council to take enforcement action, if such action had been determined appropriate in the circumstances.

122. That said, the complainant had a right to expect that his concerns – an allegation that the existing turbine constituted a breach of planning control – would be dealt with according to relevant policies and procedures, including the Council's Planning Enforcement Strategy, and in keeping with good administrative practice. My investigation found that that expectation was not met.

123. Specifically, my investigation identified the following instances of maladministration on the part of the Council:

- (i) the Council failed to identify the complainant's planning enforcement complaint and to open the Planning Enforcement Case within a reasonable timeframe following receipt of his letter of 18 May 2018;
- (ii) the Council failed to document the rationale for assigning a 'Priority 3' classification to the Planning Enforcement Case;
- (iii) the Council failed to carry out a site inspection, and to discuss and agree a course of action in the Planning Enforcement Case, within a reasonable timeframe of the receipt of the complainant's concerns, and in accordance with the customer expectations created by its Planning Enforcement Strategy;

- (iv) the Council failed to make an appropriate record of the decision to await the expiry of the compliance date stipulated in the warning letter issued on 4 October 2018 before issuing the enforcement notice, as agreed on 30 October 2018;
- (v) the Council failed to make an appropriate record of the subsequent decision that the enforcement notice would not issue at all because a CLUD Application had been received on 15 September 2018; and
- (vi) the Council failed to notify the complainant of the closure of the Planning Enforcement Case.

124. Although my investigation established that the Council was not proactive in seeking to establish the existing turbine's immunity date, I concluded that there was no evidence of maladministration in this element of the Council's handling of the Planning Enforcement Case.

125. I consider the maladministration disclosed by my investigation caused the complainant to experience the injustice of frustration and uncertainty. In addition, because he was not satisfied with the responses the Council provided to his Service Standards Complaint about the handling of the Planning Enforcement Case, the complainant had to take the time and trouble to bring a complaint to my Office in order to have his concerns addressed.

126. I partially uphold this complaint.

Recommendations

127. I recommend that within one month of the date of this report, Council provide the complainant with a written apology, made in accordance with NIPSO 'Guidance on issuing an apology'¹¹ for the injustice caused as a result of the maladministration identified.

128. In addition, I recommend that the Council implement the following service improvements:

¹¹ <https://nipso.org.uk/site/wp-content/uploads/2019/07/N14C-A4-NIPSO-Guidance-on-issuing-an-apology-July-2019.pdf>

- (i) the learning points highlighted in this report should be communicated to relevant Council staff, and where appropriate, staff training provided;
- (ii) the Council should review, and revise as appropriate, its current practice of not documenting the rationale for the priority classification assigned to planning enforcement investigations; and
- (iii) the Council should review, and revise as appropriate, its Planning Enforcement Strategy to ensure that it (a) accurately reflects the intended start dates for performance target timescales; and (b) that it makes clear the requirement to create and maintain appropriate records relating to the taking of planning enforcement decisions.

129. I recommend that the Council implement an action plan to incorporate these service improvement recommendations and that it provide me with an update within six months of the date of this report. The update should be supported by evidence to confirm that appropriate action has been taken.

130. The Council has informed me that it accepts these recommendations.



MARGARET KELLY
Ombudsman

22 November 2021

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.

- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

Getting it right

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

Being Customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.

- Providing honest, evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.